

Internet is inherently interstate. It is a global medium—one that is completely distance-insensitive and almost entirely location-indifferent—and virtually all Internet communications are interstate or international.<sup>37</sup> Therefore, the Commission will need to apply to Internet communications a jurisdictional classification rule similar to that adopted for mixed-use LEC special access services, where a facility with at least ten percent interstate usage is classified as interstate for separations, regulation and tariffing purposes. See 47 C.F.R. § 36.154(a); *MTS and WATS Market Structure*, 4 FCC Rcd. 5660 (1989). If dedicated telecommunications circuits are interstate under this “ten percent rule,” then Internet access services must be interstate as well—even though the user’s “link” to the network is physically intrastate. Consequently, in order to implement the Act’s educational discounts, the Commission should declare in this proceeding that all Internet communications and Internet access services are jurisdictionally interstate, and preempt state public service commission regulation of the Internet.<sup>38</sup>

Netscape does not believe the Commission should go further than this, however, by attempting to specify particular types of Internet access technologies, or generic services (e.g., Web browsing, “high-speed” data services, etc.), as eligible for discounts.<sup>39</sup>

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this purpose is the Commission’s “Learnnet” program (<http://www.fcc.gov/learnnet/>) for publicizing the Act’s educational universal service provisions and soliciting comments from schools and libraries.

<sup>37</sup> See, e.g., <http://k12.cnidr.org/gsh/gshwelcome.html> (Global Schoolhouse Project), [http://www.globe.gov/\(Global Learning and Observations to Benefit the Environment \(GLOBE\)\)](http://www.globe.gov/(Global+Learning+and+Observations+to+Benefit+the+Environment+(GLOBE))), <http://www1.whitehouse.gov/WH/EOP/OVP/html/telunion.html> (Global Information Infrastructure).

<sup>38</sup> States have no jurisdiction of services classified by the FCC as interstate. Furthermore, affirmative Commission preemption of state regulation over *intrastate* services is permitted when it is not feasible to separate traffic jurisdictionally and application of state regulation would conflict with federal policy. E.g., *NARUC v. FCC*, 880 F.2d 422, 429 (D.C. Cir. 1989). For the Internet, traffic separation is technically impossible, and the FCC has clearly adopted a policy of not regulating the Internet in order to facilitate its growth and development. Any state action relative to “intrastate” Internet access, services or pricing should therefore be preempted.

<sup>39</sup> Moreover, while the NPRM recognizes that one of the principal barriers to educational access to the Internet is a lack of resources for inside wiring and computer equipment, NPRM ¶ 79 & n.172, the (Footnote continued on next page)

We offer these comments with reservations, because Netscape believes, as discussed in Section II, that long-term universal service policy will need to move beyond the confines of the limited “telecommunications services” eligible for direct Commission support under Section 254. Yet conclusions reached today, in the relative “infancy” of the Internet, as to features and functionalities necessary for K-12 access to the information potential of the World Wide Web (*see* NPRM ¶ 109) will probably *not* be the features and functionalities of the Internet as it matures through adolescence over the coming decade. We therefore urge that the Commission not establish a separate definition of universal service applicable to educational institutions at this time, in order to permit the marketplace an adequate opportunity to develop the very “advanced” services that Section 254(h) aspires to for America’s schools. In short, there is no easy method for deciding which types of information service access are “technically feasible and economically reasonable” for provision to K-12 schoolrooms. *See* Section 254(h)(2). In a market as embryonic as the Internet and World Wide Web, such determinations are at best premature, and at worst hold the potential for “locking in” schools to technology that may soon become obsolete.

B. The Commission Has Wide Latitude Under Sections 706 and 707 to Stimulate Internet Access for Schools

The answer to this dilemma, Netscape recommends, is for the Commission to utilize the flexibility provided in the Act to approach advanced telecommunications and information access for schools in a different way. The Commission has two broad areas

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Act gives the Commission no express authority to offer financial support in these deregulated equipment areas. In any event the computer industry’s tremendously successful “NetDay ‘96” initiative in California suggests strongly that community involvement is far preferable, and perhaps more effective, than governmental regulation or taxation for “wiring” American public schools.

of authority, not encompassed in its universal service obligations, for fostering the extension of Internet access to America's educational institutions. First, the "Advanced Telecommunications Incentives" provisions of Section 706 of the Act allow the Commission to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans," specifically including schools, through regulatory reform and by "remov[ing] barriers to infrastructure investment." 47 U.S.C. § 706(a). Second, the "Telecommunications Development Fund" of Section 707 similarly authorizes the Commission to use certain auction revenues to support universal service, stimulate technological innovation and "to promote access to capital for small businesses in order to enhance competition in the telecommunications industry." *Id.* § 707(a).

These sections of the Act not only give the Commission more flexibility than Section 254's universal service requirements—since the Commission is not limited to setting price-support mechanisms, and can act directly to accelerate the deployment of telecommunications infrastructure—but are also not subject to the same exclusion of Internet and enhanced "information services" providers.<sup>40</sup> For instance, Section 706(c)(1) defines "advanced telecommunications capability. . . *without regard to any transmission media or technology*, as high-speed, switched, broadband telecommu-

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<sup>40</sup> The Senate Report on the Act (S.652) is particularly illuminating on this key point. Both Sections 254 and 706 were adopted, largely without change, from S.652 as it passed the Senate in June 1995. The Senate Report specifically emphasizes that the universal service provision "does not require providers of information services to contribute to universal service. Information services providers do not 'provide' telecommunications services; they are users of telecommunications services. The definition of telecommunications service specifically excludes the offering of information services . . . precisely to avoid imposing common carrier obligations on information service providers." Senate Report at 28. In contrast, the Report indicates Congress intended present Section 706 to be the Commission's vehicle for promoting access to the Internet, emphasizing that because "only three percent of U.S. classrooms have access to the (Footnote continued on next page)

ications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology.” *Id.* § 707(c)(1) (emphasis supplied).<sup>41</sup> These provisions of the Act thus charter the Commission to stimulate market opportunities for ISPs, OSPs, small businesses and other potential providers of Internet access for educational institutions with a range of measures—from direct financial assistance, to acceleration of licensing timeframes, to creation of “build out” incentives for provision of broadband Internet access to schools—that are not available to it under Section 254. Moreover, the Commission can do so without entering into the legally tenuous ground, discussed in Section II, of attempting to extend universal service support obligations beyond “telecommunications carriers” to information service providers.

In sum, to accelerate the day when all America’s schoolrooms offer advanced telecommunications and access to the “equal educational opportunity” of the World Wide Web, the Commission should rationalize universal service policy, refrain from creating a special “educational” definition of universal service, classify all Internet communications as interstate and preempt state jurisdiction over Internet access and services, and use its Section 706 and 707 flexibility to craft special measures for fostering “wired” elementary and secondary schools. Netscape has been a major private sector participant in programs to enhance Internet access and informational literacy for Amer-

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Internet,” the advanced telecommunications incentives program should be used “to promote the deployment of broadband capability to elementary and secondary schools.” *Id.* at 51.

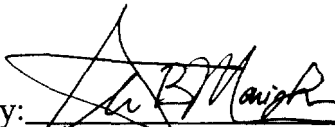
<sup>41</sup> Similarly, Section 707(k)(3) defines “telecommunications industry” as “communications businesses using regulated or unregulated facilities or services and includes broadcasting, telecommunications, cable, computer, data transmission, software, programming, advanced messaging, and electronics businesses.”

ica's schools, and looks forward to working with the Commission to realize this profoundly revolutionary, and egalitarian, objective.

### CONCLUSION

The Commission must be sensitive to the unique legal, economic and competitive market structure of the Internet in fashioning universal service policies under Section 254 of the Act. The best way to assure information service access for all Americans is to replace the inefficient, anticompetitive system of implicit universal support mechanisms with an explicit, external and competitively neutral scheme that allows true price competition for the telecommunications infrastructure on which the Internet depends. The Commission should classify all Internet services as jurisdictionally interstate, preempt state regulation of the Internet, and use its more flexible authority under Sections 706 and 707 to directly stimulate the accelerated provision of Internet and World Wide Web access for schools and libraries.

Respectfully submitted,

By: 

Roberta R. Katz  
Senior Vice President, General  
Counsel & Secretary  
Peter F. Harter  
Public Policy Counsel  
Netscape Communications Corp.  
[http://home.netscape.com/  
pfh@netscape.com](http://home.netscape.com/pfh@netscape.com)  
487 East Middlefield Road  
Mountain View, CA 94043  
415.937.2728 415.937.3719

Jeffrey Blumenfeld  
Glenn B. Manishin  
Christy C. Kunin  
Christine A. Mailloux  
Blumenfeld & Cohen - Technology Law Group  
[http://www.technologylaw.com/techlaw/  
info@technologylaw.com](http://www.technologylaw.com/techlaw/info@technologylaw.com)  
1615 M Street, N.W.  
Suite 700  
Washington, DC 20036  
202.955.6300 202.955.6460 fax

Dated: April 12, 1996

*Attorneys for  
Netscape Communications Corporation*

EXHIBIT A

Worldwide Internet Users

1994

1995

1996

1997

1998

1999

2000

2001

2002

2003

2004

2005

66.6%

1994

1995

1996

1997

Worldwide Internet Users

1998

1999

2000

2001

2002

2003

2004

2005

1994

Partial/Shell Access

24%

Users = 38MM



NETSCAPE

# Radical Growth

24+ million Web users as of Sept. '95

1 - 1.5 million new users with Netscape  
clients

Expected to double in the next 60 months

300,000+ web servers to be shipped  
in 1996

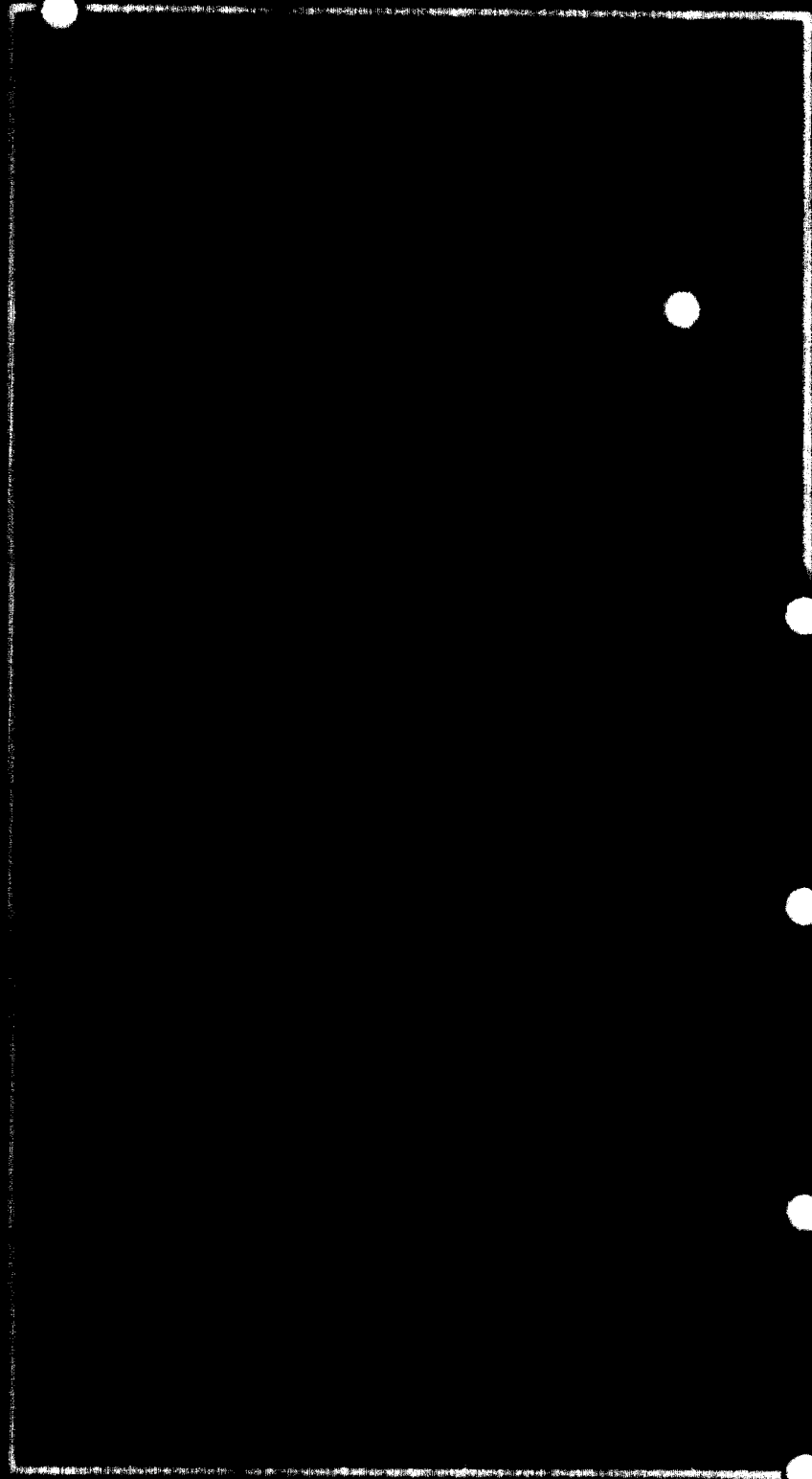
Expected to 3.4 million in 1998



NETSCAPE



# Internet Host Growth 1969-95

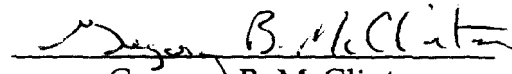


1969 1970 1971 1972 1973 1974 1975 1976 1977 1978 1979 1980 1981 1982 1983 1984 1985 1986 1987 1988 1989 1990 1991 1992 1993 1994 1995



## CERTIFICATE OF SERVICE

I, Gregory B. McClinton, do hereby certify on this 12th day of April, 1996, that I have served a copy of the foregoing document via first class mail, postage prepaid, to the parties below:

  
Gregory B. McClinton

The Honorable Reed E. Hundt\*  
Chairman  
Federal Communications Commission  
1919 M Street, N.W. - Room 814  
Washington, D.C. 20554

The Honorable Rachel B. Chong\*  
Commissioner  
Federal Communications Commission  
1919 M Street, N.W. - Room 844  
Washington, D.C. 20554

The Honorable Susan Ness\*  
Commissioner  
Federal Communications Commission  
1919 M Street, N.W. - Room 832  
Washington, D.C. 20554

The Honorable James H. Quello\*  
Commissioner  
Federal Communications Commission  
1919 M Street, N.W. - Room 802  
Washington, D.C. 20554

The Honorable Kenneth McClure  
Vice Chairman  
Missouri Public Service Commission  
301 W. High Street, Suite 530  
Jefferson City, MO 65102

Regina M. Keeney\*  
Chief, Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N.W. - Room 500  
Washington, D.C. 20554

The Honorable Laska Schoenfelder  
Commissioner  
South Dakota Public Utilities  
Commission  
500 E. Capital Avenue  
Pierre, SD 57501

Martha S. Hogerty  
Public Counsel for the State of Missouri  
P.O. Box 7800  
Harry S. Truman Building - Room 250  
Jefferson City, MO 65102

---

Indicates service by hand delivery

Deborah Dupont  
Federal Staff Chair  
Federal Communications Commission  
2000 L Street, N.W., Suite 257  
Washington, D.C. 20036

Eileen Benner  
Idaho Public Utilities Commission  
P.O. Box 83720  
Boise, ID 83720-0074

William Howden  
Federal Communications Commission  
2000 L Street, N.W., Suite 812  
Washington, D.C. 20036

Debra M. Kriete  
Pennsylvania Public Utilities  
Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Mark Long  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Gerald Gunter Building  
Tallahassee, FL 32399-0850

Sandra Makeeff  
Iowa Utilities Board  
Lucas State Office Building  
Des Moines, IA 50319

Michael A. McRae  
D.C. Office of the People's Counsel  
1133 15th Street, N.W. - Suite 500  
Washington, D.C. 20005

Terry Monroe  
New York Public Service Commission  
Three Empire Plaza  
Albany, NY 12223

Paul E. Pederson  
State Staff Chair  
Missouri Public Service Commission  
P.O. Box 360  
Truman State Office Building  
Jefferson City, MO 65102

Charles Bolle  
South Dakota Public Utilities Commission  
State Capital, 500 E. Capital Avenue  
Pierre, SD 57501-5070

Lorraine Kenyon  
Alaska Public Utilities Commission  
1016 West Sixth Avenue, Suite 400  
Anchorage, AK 99501

Clara Kuehn  
Federal Communications Commission  
2000 L Street, N.W., Suite 257  
Washington, D.C. 20036

Samuel Loudenslager  
Arkansas Public Service Commission  
P.O. Box 400  
Little Rock, AR 72203-0400

Philip F. McClelland  
Pennsylvania Office of Consumer  
Advocate  
1425 Strawberry Square  
Harrisburg, PA 17120

Rafi Mohammed  
Federal Communications Commission  
2000 L Street, N.W., Suite 812  
Washington, D.C. 20036

Andrew Mulitz  
Federal Communications Commission  
2000 L Street, N.W., Suite 257  
Washington, D.C. 20036

Mark Nadel\*  
Federal Communications Commission  
1919 M Street, N.W. - Room 542  
Washington, D.C. 20554

Gary Oddi  
Federal Communications Commission  
2000 L Street, N.W., Suite 257  
Washington, D.C. 20036

Teresa Pitts  
Washington Utilities and Transportation  
Commission  
P.O. Box 47250  
Olympia, WA 98504-7250

Jeanine Poltronieri  
Federal Communications Commission  
2000 L Street, N.W., Suite 257  
Washington, D.C. 20036

James Bradford Ramsay  
National Association of Regulatory  
Utility Commissioners  
1201 Constitution Avenue, N.W.  
Washington, D.C. 20423

Jonathan Reel  
Federal Communications Commission  
2000 L Street, N.W., Suite 257  
Washington, D.C. 20036

Brian Roberts  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102-3298

Gary Seigel  
Federal Communications Commission  
2000 L Street, N.W., Suite 812  
Washington, D.C. 20036

Pamela Szymezak  
Federal Communications Commission  
2000 L Street, N.W., Suite 257  
Washington, D.C. 20036

Whiting Thayer  
Federal Communications Commission  
2000 L Street, N.W., Suite 812  
Washington, D.C. 20036

Deborah S. Waldbaum  
Colorado Office of Consumer Counsel  
1580 Logan Street, Suite 610  
Denver, Colorado 80203

Alex Belinfante  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

Larry Povich  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

Kenneth P. Moran  
Federal Communications Commission  
2000 L Street, N.W., Suite 812  
Washington, D.C. 20036

The Honorable Julia Johnson  
Commissioner  
Florida Public Service Commission  
Capital Circle Office Center  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

The Honorable Sharon L. Nelson  
Chairman  
Washington Utilities and Transportation  
Commission  
P.O. Box 47250  
Olympia, WA 98504-7250

Richard Welch\*  
Federal Communications Commission  
1919 M Street, N.W. - Room 544  
Washington, D.C. 20554

Mark Corbitt\*  
Federal Communications Commission  
1919 M Street, N.W. - Room 822  
Washington, D.C. 20554

International Transcription Service\*  
2100 M Street - Room 140  
Washington, D.C. 20037